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SUPREME COURT, U.S.

No. 07-943

In The
Supreme Court of the United States

LINDA LEBOON,

Petitioner,

v.

LANCASTER JEWISH COMMUNITY CENTER ASSOCIATION,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF IN OPPOSITION

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March 19, 2008

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QUESTION PRESENTED

1) Whether the petitioner has failed to present any conflict between the lower court's decision and any decision of this Court or any circuit court of appeals?

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INTRODUCTION

This case involves the scope of Title VII's exemption for religious corporations, associations, educational institutions, and societies. Petitioner, Linda LeBoon ("Petitioner") seeks review of a decision from the Third Circuit Court of Appeals which held that Respondent, the Lancaster Jewish Community Center Association ("the LJCC")[1] was a religious corporation exempt from Title VII under Section 702 of the Civil Rights Act of 1964. Petitioner asserts that there is a conflict among the circuit courts over the scope of Title VII's religious organization exemption and asks this Court to resolve the alleged split. Respondent opposes this petition because there is no such split among the circuits. Respondent further opposes this petition because Petitioner mischaracterizes the decisions of this Court and the court below.

STATEMENT OF THE CASE

The LJCC is a non-profit corporation located in Lancaster, Pennsylvania. The LJCC employed Petitioner, Linda LeBoon, as a bookkeeper from November of 1998 through August of 2002. On or about August 30, 2002, the LJCC eliminated Petitioner's position due to serious financial problems

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[1] On or about January 1, 2004 the Lancaster Jewish Community Center Association and the Lancaster Jewish Federation merged and formed the Jewish Community Alliance of Lancaster. (A-3). The Lancaster Jewish Community Center Association was the entity that employed Petitioner. For the sake of convenience, this brief will generally refer to Respondent interchangeably as "the LJCC" and "Respondent."

that the LJCC was experiencing. Petitioner thereafter filed a federal suit against the LJCC claiming that she was terminated by the LJCC because of her religious belief (she is a self-described evangelical Christian), and for allegedly opposing race discrimination.

Since its inception over fifty years ago, the LJCC's mission has been "to develop, involve, and sustain a cohesive Jewish community through identity, education, and cooperation for all ages." This mission statement is prominently displayed on the walls of the LJCC's lobby. (A-17).[2] Both the Articles of Incorporation and the bylaws of the LJCC state that the organization's mission is ". . . to enhance and promote Jewish life, identity, and continuity. . . ." *Id.* The bylaws of the LJCC contain multiple provisions designed to ensure that a Jewish presence remains on the Board at all times. The bylaws require that rabbis from all three area synagogues serve as honorary, non-voting members. (A-18). All three area synagogues provide input regarding Respondent's programming and additionally assist Respondent in raising funds. *Id.*

Respondent obtains funding for some of its programs from the United Way. (A-4). Otherwise, Respondent obtains funding from private trusts; funds of the previously existing Lancaster Jewish Federation (which has since merged into the LJCC); membership dues; and programs run by Respondent, including its camp, preschool, and rental programs. (A-4).

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[2] References to the appendix are to the appendix to the petition for writ of certiorari.

Respondent also receives contributions from various persons and entities, including the local synagogues. (A-18-19). Although the vast majority of LJCC members are Jewish, individuals of all religious backgrounds are permitted to join the LJCC. (A-4).

Respondent furthers its mission of developing a Jewish community through various community programs. Some of these programs are offered for the youth in the community. For example, the LJCC offers pre-school and camp programs that teach Jewish awareness and values. These values are drawn from The Torah and include such principles as "Tikkun Olam" (healing the world) and "Tzedakah" (charitable giving and compassion towards others). (A-18). The pre-school program teaches young children about Jewish holidays and features a "Tot Shabbat" program every Friday. (A-21). Area rabbis have always visited and participated in the preschool, camp, and other LJCC programs. (A-19).

Prior to the fall of 2003, the LJCC invited older Jewish youth in the Lancaster area to meetings of the B'nai B'rith Youth Organization (BBYO)—a world-wide organization for Jewish teens aimed at developing leadership potential. (A-22). Respondent also offers religious educational programming directed at adults. *Id.* These programs are taught by local rabbis or other community members.

The LJCC is a contact point for the Jewish community of Lancaster. For example, it provides contact and general information to Jewish individuals new to the community regarding the area synagogues. (A-61). Jewish seniors may also meet at the LJCC's

"Friendship Club." *Id.* The LJCC also publishes the *Lancaster Jewish News*, which contains articles of general interest to the Jewish community, as well as articles espousing Jewish values and principles. (A-4).

Respondent also hosts special celebrations in connection with Jewish holidays, including Chanukah, Yom HaShoa, Sukkot, and Purim. (A-20). Local rabbis frequently attend and participate in these celebrations. (A-19).

Respondent maintains a kosher kitchen on its premises and serves strictly kosher food at all events hosted by the LJCC, including all holiday dinners. (A-21). For many years, the LJCC employed a Mashgiach (kosher supervisor) to ensure that the kitchen was run in accordance with Jewish dietary laws. *Id.* In or around November of 1999, the Mashgiach resigned. After the Mashgiach resigned, however, the LJCC worked with one of the rabbis in the community to ensure that functions at the LJCC would be kept kosher for those who observe the kosher mandate. *Id.*

The area rabbis have also provided feedback relied upon by the Board when evaluating the Executive Director's performance. For example, the Board Minutes from the February 3, 2003 meeting reflect that one of the Board's reasons for deciding not to renew Ms. Featherman's employment contract was her failure to ". . . have the confidence of the leaders of the synagogues." (A-18). These same minutes reflect the Board's concern that Featherman had alienated the Jewish organization Hadassah. *Id.*

Petitioner was hired in November of 1998 as a bookkeeper. (A-3). At her time of hire, Petitioner reported to Ted Busch, who then served as Executive Director. (A-60). In January of 2002, Natalie Featherman replaced Ted Busch as Interim Executive Director. (A-4). At the time that the LJCC hired Featherman, Respondent was in dire financial circumstances that had been worsening for some time. (A-4).

According to Petitioner, Featherman had generally poor relationships with the LJCC staff. (A-5). Petitioner testified that her relationship with Featherman began to deteriorate significantly in the spring of 2002 when Featherman distributed a memo to Petitioner and other members of the staff. (A-4). Petitioner frequently complained about Featherman and the decisions she made. For example, Petitioner complained about Featherman's decision to discharge Sandy Simms, a former employee of Lancaster's Office of Aging who performed some receptionist duties at the LJCC. (A- 5). Featherman terminated Simms on May 30, 2002 after Simms was absent and failed to call in to alert the LJCC of her absence. (A-5).

During 2002, the LJCC's finances continued to decline. (A-5). Circumstances became so critical that the Jewish Federation advanced to the LJCC fifty percent of the amount that had been allocated to it for 2003. (A-4). In an effort to keep the LJCC from closing its doors, Featherman considered various options for cutting costs and maximizing efficiency at the LJCC. After reviewing Petitioner's job position and responsibilities, Featherman concluded that

Petitioner's job duties could be more efficiently performed by one of Petitioner's co-workers. (A-5).

On August 30, 2002, Featherman notified Petitioner that her position had been eliminated due to the LJCC's financial crisis. (A-5). Petitioner does not dispute that the LJCC was in serious financial trouble at the time that her position was eliminated. Petitioner thereafter filed this action in the United States District Court for the Eastern District of Pennsylvania under Title VII, 42 U.S.C. § 2000e, claiming that she was terminated by the LJCC because of her religious beliefs and for allegedly opposing race discrimination.

Following discovery, the parties filed cross-motions for summary judgment. Respondent's motion sought the dismissal of all of Petitioner's claims. On December 16, 2004, Magistrate Judge Jacob Hart granted Respondent's motion and dismissed Petitioner's case. Judge Hart found that Respondent was exempt from Title VII's prohibition against religious discrimination due to its status as a religious corporation. Judge Hart also dismissed Petitioner's retaliation claim, finding that Petitioner could not establish a *prima facie* case of retaliation. Finally, Judge Hart dismissed the remaining state claim for lack of jurisdiction. (A-56-68).

Petitioner filed a motion for reconsideration of the court's summary judgment ruling on December 23, 2004. By order dated January 14, 2005, the court agreed to reconsider its ruling because one of the statements appearing in the court's December 16th opinion regarding the LJCC's funding was contrary to

the record. Following its reconsideration, the court issued a second order and accompanying memorandum dated February 17, 2005. (A-71). That order again found the LJCC to be a religious corporation and again granted summary judgment to the LJCC. The relief set forth in the February 17th Order is identical to that provided in the December 16th Order.

On February 25, 2005, Petitioner filed for a second time the same motion for reconsideration that she had filed on December 23rd. The only way in which this motion differed from the December 23rd motion is it had a different date and it referred to the February 17th Order, as opposed to the December 16th Order. The court denied for a second time this motion for reconsideration on March 11, 2005. (A-81).

On April 4, 2005 Petitioner filed an appeal of the district court's Order in the United States Court of Appeals for the Third Circuit. This case was argued before the Third Circuit Court of Appeals on September 26, 2006. On September 19, 2007 the Third Circuit Court of Appeals filed its opinion in this case. The Third Circuit Court of Appeal's decision affirmed the decision of the district court and held that the LJCC was entitled to the protection of Section 702 of Title VII because the LJCC's "structure and purpose were primarily religious." (A-15). The Third Circuit's opinion also affirmed the district court's grant of summary judgment on Petitioner's claims for retaliation because Petitioner had failed to "place[ ] enough evidence in the record to create a genuine issue of material fact as to whether there was a causal link between her complaints and her termination." (A-29).

Petitioner filed a petition for rehearing with the Court of Appeals which was denied by an order entered on October 26, 2007. (A-49).

REASONS FOR DENYING THE WRIT PETITION

This Court should deny the petition because there is no conflict between the Third Circuit's decision and any decision of this Court or any circuit court. Petitioner mischaracterizes this Court's precedent and the decisions of the lower courts in an attempt to create a conflict.

I. PETITIONER MISCHARACTERIZES THE HOLDING OF THIS COURT IN *AMOS* IN AN ATTEMPT TO CREATE A CONFLICT APPROPRIATE FOR THIS COURT TO REVIEW

Petitioner mischaracterizes this Court's holding in *Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327 (1987). Petitioner asserts that in the *Amos* case this Court approved a test created by the district court in that case for the purpose of determining whether the exemption of Section 702 applied to a gymnasium run by the Mormon Church. (Petition at 14). Petitioner contends that "[t]he exemption was found applicable only because the gymnasium was 'intimately connected' to the Church financially and in matters of management." (Petition at 14) (citing *Amos*, 483 U.S. at 332).

Petitioner, however, overstates the holding of this Court in *Amos*. The question presented in *Amos* was, "whether applying the § 702 exemption to the secular nonprofit activities of religious organizations violates the Establishment Clause of the First Amendment." *Amos*, 483 U.S. at 330. This court was not called on, however, to determine specifically whether the gymnasium was a religious organization itself. In fact, the plaintiffs in *Amos* did not contest that the defendants in that case were religious organizations. *See Amos*, 483 U.S. at 330 n.3; *Amos v. Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints*, 594 F. Supp. 791, 798 (D.C. Utah 1984) ("The plaintiffs do not contest that the defendants or the Mormon Church are religious entities.").

The test to which Petitioner refers in the *Amos* case was a test devised by the United States District Court for the District of Utah to determine whether an activity conducted by a religious organization was religious or nonreligious. The import of this distinction was whether it was unconstitutional to extend the exemption of Section 702 to the nonreligious activities of a religious organization, not, as Petitioner suggests, a test for determining specifically whether an entity is a religious organization. This Court's decision in *Amos* therefore does not stand for the proposition for which Petitioner offers it and there is no conflict between the Third Circuit's opinion and this Court's precedent in *Amos* which would necessitate review of the Third Circuit's decision by this Court.

II. PETITIONER MISCHARACTERIZES THE NINTH CIRCUIT'S DECISION IN *TOWNLEY*

Petitioner devotes a substantial portion of her argument to the proposition that there is a split between the circuits concerning the interpretation of Section 702 that must be resolved by this Court. Petitioner's characterization of the Ninth Circuit's decision in *EEOC v. Townley Eng'g & Mfg. Corp.*, 859 F.2d 610 (9th Cir. 1988), is particularly misleading because Petitioner insinuates that the court in *Townley* employed a different standard than the Third Circuit used in the present case.

In fact, the Ninth Circuit in *Townley* and the Third Circuit used precisely the same standard. This standard, as noted by the Third Circuit in this case, is: whether the organization's "structure and purpose [are] primarily religious." (A-25); *see also Townley*, 859 F.2d at 618-19. The Third Circuit also used the same factor test as the Ninth Circuit in making this determination.[3] This test requires that "[a]ll

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[3] As part of its analysis of the LJCC the Third Circuit listed a number of factors that it intended to consider. Although there is no exhaustive list of factors to be considered when determining an entity's character and purpose, the Third Circuit determined that over the years courts have looked at the following factors:

> (1) whether the entity operates for a profit, (2) whether it produces a secular product, (3) whether the entity's articles of incorporation or other pertinent documents state a religious purpose, (4) whether it is owned, affiliated with or financially supported by a formally religious entity such as a church or synagogue,

significant religious and secular characteristics must be weighed to determine whether the corporation's purpose and character are primarily religious." (A-16); *Townley*, 859 F.2d at 618.

It is noteworthy that the facts in *Townley* differ significantly from those in the present case. Townley Manufacturing Company was a mining equipment manufacturer whose owners were religious. The owners attempted to incorporate religion into the otherwise secular business of manufacturing mining equipment. In analyzing the application of Section 702, the court examined a number of factors to determine whether Townley Manufacturing Company was "primarily religious" in nature. *Id.* at 619. After examining a number of factors, including the nature of

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> (5) whether a formally religious entity participates in the management, for instance by having representatives on the board of trustees, (6) whether the entity holds itself out to the public as secular or sectarian, (7) whether the entity regularly includes prayer or other forms of worship in its activities, (8) whether it includes religious instruction in its curriculum, to the extent it is an educational institution, and (9) whether its membership is made up by coreligionists.

(A-16). (citing *Killinger v. Samford University*, 113 F.3d 196 (11th Cir.1997); *EEOC v. Kamehameha Schools/Bishop Estate*, 990 F.2d 458 (9th Cir.1993); *Townley*, 859 F.2d at 618-19 (9th Cir.1988); *EEOC v. Mississippi College*, 626 F.2d 477 (5th Cir.1980)). Courts generally do not consider all of these factors in any one case and have found "religious corporation" status based on consideration of a relatively small number of these factors. *See EEOC v. Presbyterian Ministries, Inc.*, 788 F. Supp. 1154 (W.D. Wash. 1992).

the operations of the company and whether its articles of incorporation stated any religious purpose, the court concluded that, "[w]hen viewed together, we have no difficulty in holding that these characteristics indicate that Townley is primarily secular." *Id.* at 619.

The Ninth Circuit's conclusion regarding the non-application of a religious organization exemption to a mining manufacturing equipment corporation is far from ground-breaking. Petitioner, however, suggests that this seemingly inconsequential case stands for the proposition that only "organizations funded or controlled by a religious group" may be considered religious organizations under Section 702. On the basis of this interpretation, Petitioner portrays her petition as a request for this Court to review a split in the circuits. In fact, the only analytical distinction between the Third Circuit's decision in the instant case and the *Townley* court is the interpretation of what is, at best, murky legislative history discussed in dicta in the *Townley* case.

Petitioner stakes her entire argument on two comments in the legislative history. These comments were part of a congressional debate leading up to the passage of the Civil Rights Act of 1964. During the course of this debate representatives were responding to questions about whether specific entities would fall under the exemption of Section 702. Petitioner identifies two comments by legislators on the subject of the scope of Section 702 during this debate. (Petition at 15-16). The first comment referred to by Petitioner is by Representative Roosevelt who confirmed for a fellow representative that an orphanage in the representative's district that was

wholly owned by a religious order would "unquestionably" be exempt under § 702. (Petition at 15-16) (citing *EEOC Legislative History of Titles VII and XII of the Civil Rights Act of 1964*, at 3201 (1968)). Representative Celler, then Chairman of the Judiciary Committee, likewise confirmed that the orphanage, as a wholly church supported organization, would fall under the exemption. (Petition at 16) (citing *EEOC Legislative History of Titles VII and XII of the Civil Rights Act of 1964*, at 3204).

These isolated comments do not lead to the conclusion, as Petitioner suggests, that Section 702 protects only formal houses of worship. As the Third Circuit majority opinion notes, this legislative debate "overwhelmingly regarded the ability of a secular educational institution teaching secular subjects, but affiliated with or owned by a religious order or organization, to hire preferentially persons of the same faith." (A-28) (citing *EEOC Legislative History of Titles VII and XII of the Civil Rights Act of 1964*, at 3199 (1968)). Therefore, this debate is irrelevant to the question examined by the Third Circuit in the present case. (*See* A-28). As the Third Circuit majority remarks, "It is a large leap from acknowledging this concern, whether or not well-founded, to concluding that the Congressmen believed the existing bill to protect virtually nothing beyond formal houses of worship." (A-28).

Petitioner's confidence in the clarity of the legislative history discussed in *Townley* is not justified. As the Third Circuit's opinion noted, the isolated comments relied on by Petitioner are "largely irrelevant" to the issues presented in this case. (A-

28).[4] The scope of the religious organization exemption was not clearly resolved by the legislators at the time of this debate and even the Ninth Circuit in *Townley* acknowledged that "'[this] debate is far from comprehensive.'" (A-27) (citing *Townley* 859 F.2d at 617). Further, it is noteworthy that the entirety of the Ninth Circuit's commentary on this point merely

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[4] Furthermore, reliance on isolated comments in legislative history is, in general, less than convincing. As this court has noted,

> legislative history in particular is vulnerable to two serious criticisms. First, legislative history is itself often murky, ambiguous, and contradictory. Judicial investigation of legislative history has a tendency to become, to borrow Judge Leventhal's memorable phrase, an exercise in " 'looking over a crowd and picking out your friends.' " *See* Wald, Some Observations on the Use of Legislative History in the 1981 Supreme Court Term, 68 Iowa L.Rev. 195, 214 (1983). Second, judicial reliance on legislative materials like committee reports, which are not themselves subject to the requirements of Article I, may give unrepresentative committee members-or, worse yet, unelected staffers and lobbyists-both the power and the incentive to attempt strategic manipulations of legislative history to secure results they were unable to achieve through the statutory text. We need not comment here on whether these problems are sufficiently prevalent to render legislative history inherently unreliable in all circumstances, a point on which Members of this Court have disagreed. It is clear, however, that in this instance both criticisms are right on the mark.

Exxon Mobil Corp v. Allapattah Services, Inc., 545 U.S. 546, 568-69 (2005).

bolstered its holding that a mining manufacturing equipment corporation was not a religious organization exempt from Title VII pursuant to section 702 – a decision reached through use of the same totality of the circumstances factor analysis employed by the Third Circuit in the case below. Respondent respectfully suggests that the Ninth Circuit's discussion of legislative history in the *Townley* case was no more than a digression and certainly cannot form the basis of any legitimate argument that a conflict exists among the circuits.[5]

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[5] Petitioner also misleadingly alleges that there are conflicts between the opinion of the Third Circuit in the present case and past decisions of other circuit courts. For example, Petitioner argues that the Third Circuit's opinion conflicts with the Fourth Circuit's opinion in *Fike v. United Methodist Children's Home, Inc.*, 547 F. Supp. 286 (E.D. Va. 1982), *aff'd*, 709 F.2d 284 (4th Cir. 1983). (*See* Petition at 12-13). In *Fike* the court considered whether a home for orphans that had been established by the Methodist church was a religious organization under Section 702. After examining the purpose and the day-to-day operations of the children's home, including whether or not the children were required to attend church services, the court concluded that "the United Methodist Children's Home is, quite literally, Methodist only in name. It is a secular organization." *Fike*, 547 F. Supp. at 290. Petitioner erroneously concludes that because the ultimate determination of the Third Circuit's opinion differs from the ultimate conclusion of the court's decision in *Fike*, there is necessarily a conflict between the two courts. The Fourth Circuit Court of Appeals may have determined, after examining the unique facts of that case that the United Methodist Children's home had, over time, become a secular rather than a religious organization, whereas the Third Circuit may have concluded, after examining the unique fact of this case that the LJCC was a

III. THE STANDARD ERRONEOUSLY POSITED BY PETITIONER PRESENTS AN EXCESSIVE ENTANGLEMENT WITH RELIGION.

In light of this Court's precedent, *Townley* cannot stand for the proposition for which Petitioner offers it—i.e. that only "organizations funded or controlled by a religious group" may be considered religious organizations under Section 702. (Petitioner at 15). To attempt to define exactly what is and is not a religious organization under Section 702 would, as the court acknowledged in *Townley*, be outside the authority of the courts. *See Townley* 859 F.2d at 618.

Petitioner contends that the court below impermissibly examined the religious practices of the LJCC. (Petition at 19). Although Petitioner has accused the Third Circuit of delving too far into the religious beliefs of the LJCC, Petitioner's own argument urges this Court to accept an interpretation of the *Townley* case that would implement exactly such a test. Petitioner argues that the court's decision in *Townley* created an absolute rule that only churches and organizations funded or controlled by churches are covered by the exemption of Section 702. (Petition at 15). Such an interpretation of *Townley* would risk the creation of state entanglement with religion warned against by this Court. *See generally Lemon v. Kurtzman*, 403 U.S. 602 (1971)); *see also* A-25.

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religious organization but the two courts applied essentially the same factors to those different facts when making their decisions.

Section 702 of the Civil Rights Act of 1964 provides in relevant part that "[t]his title shall not apply . . . to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities." 42 U.S.C. § 2000e-1(a). Respondent suggests that Section 702 does not offer a definition of a religious corporation, association, educational institution, or society because to subdivide this definition to any greater degree would create an impermissible entanglement with religion. If Congress would have imposed the church-based approach espoused by Petitioner, Section 702 would cause or at least implicate a state entanglement with religion. As this Court stated in *Amos*, "It cannot be seriously contended that § 702 impermissibly entangles church and state; the statute effectuates a more complete separation of the two and avoids the kind of intrusive inquiry into religious belief that the District Court engaged in in this case." *Amos*, 483 U.S. at 340. Justice Brennan reinforced this idea in his concurrence in *Amos*, noting that attempting to determine whether a particular activity of a religious organization is religious or secular "results in considerable ongoing government entanglement in religious affairs." (A-25) (citing *Amos* 483 U.S. at 343 (Brennan, J., concurring)). For this reason, the only analysis the courts may properly conduct is the totality of the circumstances-based factor analysis to determine whether the character and purpose of an organization is religious or secular.

With the full awareness of these concerns, the Third Circuit majority's opinion specifically declined Petitioner's "invitation to hold that the LJCC is a center for Jewish culture rather than religion . . . because to engage in such an analysis would risk precisely the sort of state entanglement with religion that the Supreme Court has repeatedly warned against." (A-25) (citing *Amos*, 483 U.S. at 343 (Brennan, J., concurring; *Lemon v. Kurtzman*, 403 U.S. 602, 613 (1971)). Had the court below taken up Petitioner's offer to attempt to form a legal conclusion as to whether Jewish culture and religion are separate, it would have improperly entangled itself in questions of theology. *See Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 336 (1987) (stating that inquiry into the religious nature of an organization should be avoided because "it is a significant burden on a religious organization to require it, on pain of substantial liability, to predict which of its activities a secular court will consider religious").

The Third Circuit majority's opinion instead analyzed the LJCC's stated religious mission which is to "develop, involve, and sustain a cohesive Jewish community through identity, education, and cooperation through all ages," and then discussed the specific ways in which the LJCC carries out this mission in the community. The court below did not attempt to determine which of the religious aspects of the LJCC are more significant than the others, nor did it attempt to delve into the centrality of particular beliefs or interpretations of those beliefs. After reviewing all of these factors the Third Circuit determined that "[t]hese characteristics of the LJCC,

taken together, clearly point to the conclusion that the LJCC was primarily a religious organization." (A-22). The Third Circuit Court of Appeals correctly concluded that Respondent was a religious organization entitled to the protection of Section 702 of Title VII because its structure and purpose were primarily religious.

CONCLUSION

For the foregoing reasons Respondent asks that this Court deny the petition for a writ of certiorari.

Dated: March 19, 2008

Respectfully submitted,

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